

Court of Appeals, State of Michigan

ORDER

Valerie Bland v Auto Club Ins Co

Cynthia Diane Stephens
Presiding Judge

Docket No. 303779

Michael J. Talbot

LC No. 09-027226-NF

Christopher M. Murray
Judges

The Court orders that the motion to file a late answer is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the April 5, 2011, order of the Wayne Circuit Court granting partial summary disposition to defendant hereby is VACATED. In considering a motion pursuant to MCR 2.116(C)(10), a court considers affidavits, pleadings, depositions, admissions and other evidence submitted by the parties in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). The record before this Court reflects that plaintiff had raised genuine issues of material fact. Where the proffered evidence establishes a genuine issue of material fact, the moving party is not entitled to judgment as a matter of law. See *id.* at 120. Defendant did not demonstrate in the circuit court that it was entitled to summary disposition as a matter of law, as a genuine issue of material fact exists regarding whether the referral was medically necessary. Part of that determination requires examination of the HAP contract, and defendant did not provide plaintiff's contract with her primary insurer to show that the disputed services were within the terms of that contract. See *Tousignant v Allstate Ins Co*, 444 Mich 301, 312; 506 NW2d 844 (1993). The case is remanded to the circuit court for further proceedings consistent with this order.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.

Talbot, J., concurs, and further states that defendant failed to provide plaintiff's underlying complaint to this Court, represented that certain facts were undisputed even though plaintiff challenged them and did not analyze the disputed facts in a light most favorable to plaintiff.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

DEC 27 2011

Date

Chief Clerk